

ORIGINAL

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D&F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MATERIAL YARD WORKERS UNION
LOCAL 1175 PENSION FUND,

Petitioner,

-against-

COFIRE PAVING CORP.,

Respondent.
-----x

MEMORANDUM AND ORDER

Case No. 08-CV-3920 (FB) (VVP)

Appearances:

For the Plaintiff:

EVAN LERNER

Lerner Law Firm

400 Post Avenue, Suite 303

Westbury, NY 11590

BLOCK, Senior District Judge:

On March 15, 2011, Magistrate Judge Pohorelsky issued a Report and Recommendation ("R&R") recommending that the Court enter an order confirming petitioner's arbitration award and awarding petitioner a judgment consisting of: (1) a principal amount of \$243,539.32; (2) interest in the amount of \$747.53, constituting interest due through June 18, 2007 on late payments and non-payments to that point; (3) liquidated damages of \$48,707.86; (4) attorney's fees of \$3,500 and arbitration fees of \$3,000; (5) interest at the rate of 8.25% per annum, compounded monthly, on any unpaid amounts above running from September 28, 2007 until paid in full; and (6) reasonable costs and expenses incurred by petitioner in enforcing the award. *See* R&R at 8-9. The R&R also stated that failure to object within fourteen days of being served with a copy of the R&R

would preclude appellate review. *See id* at 9. Petitioner's attorney mailed a copy of the R&R to respondent on March 22, 2011; no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to enter judgment in accordance with the R&R.

In addition, petitioner's submissions to establish the amount of costs and expenses, including attorney's fees, expended to enforce the arbitration award must be received by April 29, 2011.

SO ORDERED.

s/ Judge Frederic Block


FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
April 7, 2011